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08/15/2001

Christine Carlucci

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EXAMINER

EREZO, DARWIN P

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* CHRISTINE CARLUCCI and GERARD CARLUCCI

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Appeal 2009-3025  
Application 09/930,398  
Technology Center 3700

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Decided:<sup>1</sup> May 28, 2009

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Before JAMESON LEE, SALLY G. LANE, and MICHAEL P. TIERNEY,  
*Administrative Patent Judges.*

TIERNEY, *Administrative Patent Judge.*

DECISION ON APPEAL

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

A. STATEMENT OF THE CASE

This is a decision on appeal by the real parties of interest, Christine Carlucci and Gerald Carlucci under 35 U.S.C. § 134(a) from a final rejection of claims 1-14. Appellant requests reversal of the Examiner's rejection of those claims. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

References Relied on by the Examiner

Broussard	5,117,510	Jun. 2, 1992
McKay	5,305,470	Apr. 26, 1994

The Rejections on Appeal

The Examiner rejected claims 1-14 under 35 U.S.C. § 102(b) as anticipated by Broussard. The Appellant argues the patentability of claims 1-14 collectively.

The Invention

The invention relates to an apparatus designed to comfortably and efficiently maintain medical tubing on the head of a hospitalized patient. (Spec., p. 3). The invention generally comprises a substantially circular member, with one or more closed loops integrated therewith. (*Id.*).

Claim 1 is illustrative of the claimed invention and is reproduced below:

1. A device to secure medical tubing to a body comprising a circular one-piece fabric band having a length wherein the band is divided into at least a first closed loop and a second closed loop such that the band is composed of no more than two layers of fabric anywhere along the length, and wherein the first closed loop fits elastically around a portion of the body and the second closed loop is capable of receiving and holding medical tubing close to the body.

(Br. Claims App'x, p. 13).

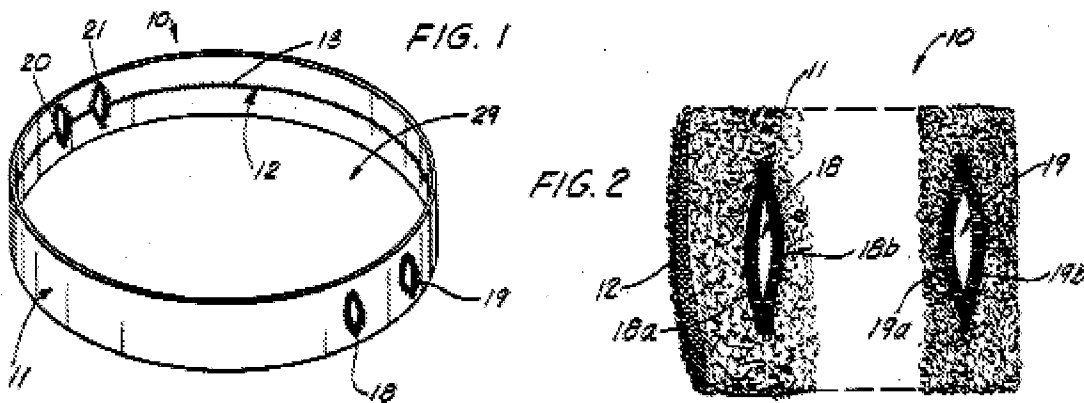
B. ISSUE

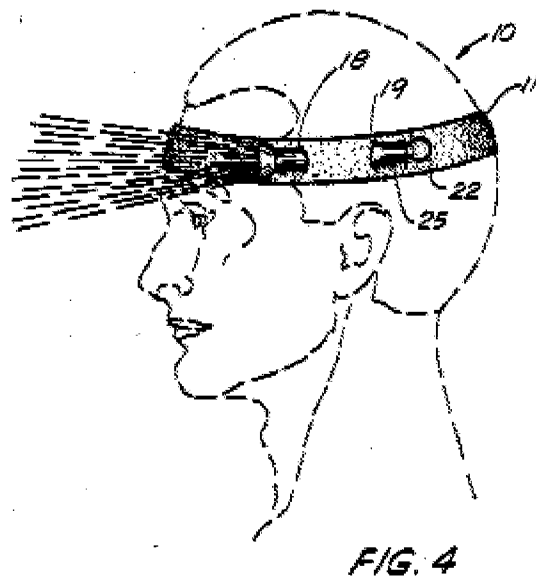
Has Appellant shown that the Examiner erred in finding that Broussard teaches a device capable of securing medical tubing comprising closed loops formed by dividing a fabric band?

C. FINDINGS OF FACT

Broussard

1. Broussard discloses headband construction for supporting head lamps. (Broussard, Abstract, col. 1, ll. 39-42).
2. Broussard's headband is shown in Figures 1, 2, and 4, as depicted below:





Broussard Figures 1, 2, and 4, depicted above, show Broussard's headband 10, and button holes 18-21 for securing a head lamp 25.

3. Broussard teaches that the space between buttonholes 18-19 and 20-21 forms an area for securing tubular shaped flashlights 25, 26. (*Id.* Figs. 1-2, col. 2, ll. 38-57).

4. Broussard teaches that a respective pair of the buttonholes 18-19 or 20-21 form circular borders that separate the rest of the headband 10, from the area that holds the flashlights 25, 26. (*Id.* at Figs. 4-5, col. 2, ll. 58-63).

#### D. PRINCIPLES OF LAW

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. *Verdegaal Bros. Inc. v. Union Oil Co.*, 814 F.2d 628, 631 (Fed. Cir. 1987).

E. ANALYSIS

The Examiner determined that Broussard teaches all of the limitations of claims 1-14. Specifically, the Examiner found that Broussard teaches a device capable of securing medical tubing to a body comprising a circular one-piece fabric band 10, wherein the band is divided into: (i) a first closed loop (the main opening of headband 10) adapted to fit elastically around a portion of the body (Fig. 3); (ii) a second closed loop (either of 18, 19) and (iii) a third loop (either of 20, 21). (Ans., pp. 3-4).

Appellant disagrees with the Examiner and contends that Broussard fails to teach all the claim limitations. (Br., pp. 5-6). In particular, Appellant states that Broussard fails to teach either “a divided band” or “closed loops formed by dividing the band.” (*Id.*).

At the outset, Appellant states that “the term ‘divided into’ as used in the claims, refers to sectioning off a portion of the band.” (*Id.* at p. 5). Appellant additionally states that “the term ‘closed loop’ used in the claims, refers to one of the sectioned off parts of the band formed by dividing the band.” (*Id.*). We give claims their broadest reasonable interpretation consistent with the specification. *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989). While we are not certain that Appellant’s definitions for the terms “divided into” and “closed loop” are the broadest reasonable definitions, we adopt them for purposes of this decision.

Broussard teaches two portions for securing a flashlight 25-26, these portions respectively formed by and bordered by one of two sets of buttonholes, either 18-19 or 20-21 (Broussard, Figs. 1-2, and 4; col. 2, ll. 38-57). The buttonholes 18-21 divide the band into closed loops that are closed circular borders separating the portion that holds the flashlights 25,

26 from the rest of the headband 10. (*Id.* at Figs. 4-5, col. 2, ll. 58-63). Accordingly, we find the Examiner did not err in determining that Broussard teaches all of the claim limitations.

Appellant also contends that “the term ‘loop,’ as used in the specification, is a gathered portion of the fabric band.” (*Id.* at p. 6). Appellant’s claims do not require a “gathered portion” loop nor is such a structure implicitly required by the claim. Accordingly, this argument is not commensurate in scope with the claims.

Appellant’s Brief includes two declarations, one from a registered nurse (Terri Lee Maurer ) and another from a third year fellow in neonatal/prenatal medicine (Veniamin Ratner, M.D.). (Br., Evid. App’x, p. 11). The declarations generally state that the device depicted in Appellant’s specification was effective in securing medical tubing to an infant and identify deficiencies in existing commercial continuous positive airway pressure products. The declarations however, do not distinguish the teachings of Broussard from the claimed invention.

#### F. CONCLUSION

Appellant has not shown that the Examiner erred in finding that Broussard teaches a device capable of securing medical tubing comprising closed loops formed by dividing a fabric band.

#### G. ORDER

The rejection of claims 1-14 under 35 U.S.C. § 102(b) as anticipated by Broussard is affirmed.

Appeal 2009-3025  
Application 09/930,398

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

ack

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